

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PATRICK MISSUD,

No. C 12-03117 WHA

Plaintiff,

v.

**ORDER DISMISSING
ACTION WITH PREJUDICE
AND DECLARING PLAINTIFF
A VEXATIOUS LITIGANT**

SAN FRANCISCO SUPERIOR COURT,
et al.,

Defendants.

Plaintiff Patrick Missud, an attorney licensed in California (State Bar No. 219614) and representing himself, has brought suit pursuant to 42 U.S.C. 1983 against several defendants, including Judges Patrick Mahoney, Andrew Cheng, and Harold Kahn; Justices William McGuiness, Martin Jenkins, and Stuart Pollak; the San Francisco Superior Court, the California First District Court of Appeals, the Commission on Judicial Performance; and the State Bar of California. Generally, Attorney Missud alleges that defendants in the judiciary are involved in a conspiracy to silence non-wealthy litigants. The State Bar filed a motion to dismiss on Eleventh Amendment grounds. The hearing on the motion to dismiss was vacated and Attorney Missud was ordered to show cause why he should not be declared a vexatious litigant (Dkt. No. 59).

For the reasons stated below, all claims are **DISMISSED WITH PREJUDICE** on grounds of judicial immunity and the Eleventh Amendment. Moreover, this order declares Attorney Missud a **VEXATIOUS LITIGANT** and requires pre-filing review for future complaints filed by Attorney Missud against judicial entities, including judges and courts.

1 **1. DISMISSAL OF THIS ACTION.**

2 Defendant State Bar of California has moved to dismiss claims against it on grounds of
3 Eleventh Amendment immunity (Dkt. No. 18). On August 21, this Court issued an order to
4 show cause why all claims against all defendants should not be dismissed on grounds of judicial
5 immunity and the Eleventh Amendment (Dkt. No. 47). Attorney Missud has filed multiple
6 responses, none of which is persuasive.

7 Absolute immunity from civil liability is generally accorded to state and federal judges
8 functioning in their official capacities. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 923 (9th
9 Cir. 2004). Judicial immunity can be stripped if the judge acts in the clear absence of all
10 jurisdiction. *Sadoski v. Mosley*, 435 F.3d 1076, 1079 (9th Cir. 2006). While Attorney Missud
11 asserts that the judicial defendants acted without authority, he fails to explain sufficiently how
12 they have done so. Instead, Attorney Missud makes vague and conclusive complaints of
13 wrongdoing: (1) the First District Court of Appeal will “rubber stamp” any decision by the San
14 Francisco Superior Court, (2) that judges have ignored facts and made up law to favor “deep
15 pockets,” and (3) particular judges have wrongfully “compelled” arbitration.

16 In this current action, like in his previous lawsuits, Attorney Missud recounts decisions
17 against him and people of low income and then concludes, ipso facto, that the judges ruling in
18 those cases are corrupt. *See, e.g., Missud v. San Francisco Sup. Ct.*, Civ. 11-1856, Dkt. No. 54
19 at *2 (N.D. Cal. Feb. 13, 2012) (Hamilton, J.) (“[T]he details of plaintiff’s allegations are
20 elusive; the complaint is loaded with vague, conclusory, and hyperbolic statements, as well as
21 what appear to be nonsensical and far-flung facts. The court also notes that some of the
22 allegations are quite reckless given plaintiff’s status as an officer of the very court he is suing.”).
23 Although a pro se plaintiff would ordinarily be given some degree of leniency in his pleadings,
24 Attorney Missud is an attorney who is currently under investigation by the State Bar for filing
25 similar frivolous lawsuits. *Patrick Missud v. State of Nevada, et al.*, Civ. 11-3567 (N.D. Cal.
26 Mar. 22, 2012) (Chen, J.) (listing other similar actions filed by Attorney Missud). Therefore,
27 this order dismisses with prejudice claims against the judicial defendants.
28

In the absence of a waiver by the state or a valid congressional override, “[t]he Eleventh Amendment bars suits which seek either damages or injunctive relief against a state, an ‘arm of the state,’ its instrumentalities, or its agencies.” *Franceschi v. Schwartz*, 57 F.3d 828, 831 (9th Cir. 1995). The California State Bar, San Francisco Superior Court, California First District Court of Appeals, and the Commission on Judicial Performance (a state agency created by Article VI, Section 8 of the California Constitution to investigate complaints of judicial misconduct) are arms of California and therefore entitled to Eleventh Amendment immunity. *See Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (Superior Court of California was an arm of the state); *Lupert v. California State Bar*, 761 F.2d 1325, 1327 (9th Cir. 1985) (suit against State Bar committees barred by Eleventh Amendment).

For the reasons stated above, all claims in this action are **DISMISSED WITH PREJUDICE**. Because Attorney Missud’s proposed complaint is frivolous and without merit, his application to proceed in forma pauperis is **DENIED**.

2. VEXATIOUS LITIGANT.

A pre-filing review order is appropriate if (1) the plaintiff is given adequate notice and an opportunity to oppose the order; (2) the Court compiles an adequate record for review; (3) the Court makes substantive findings as to the frivolous or harassing nature of the litigant’s actions; and (4) the order is narrowly tailored “to closely fit the specific vice encountered.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (internal citations omitted).

Attorney Missud is a frequent litigant and has been already declared a vexatious litigant in this district before (but only as to a particular defendant, D.R. Horton, Inc., who is not a party in this action). *Patrick Missud v. State of Nevada, et al.*, Civ. 11-3567 (N.D. Cal. Mar. 22, 2012) (Chen, J.). As discussed, Attorney Missud has filed multiple prior lawsuits against judicial defendants, including judges, courts, and other judicial entities. All of these prior actions were dismissed as frivolous. *See, e.g., Patrick Missud v. San Francisco Sup. Ct.*, Civ. 11-1856 (N.D. Cal. Feb. 13, 2012) (Hamilton, J.); *Patrick Missud v. State of Nevada, et al.*, Civ. 11-3567 (N.D. Cal. Mar. 22, 2012) (Chen, J.); *Patrick Missud v. D.R. Horton Inc., et al.*, Civ. 10-0235 (N.D. Cal. April 2, 2010) (Illston, J.).

1 Attorney Missud's multiple filings in federal and state courts arise from his purchase of a
2 home in Nevada in 2003. *See Patrice Missud v. D.R. Horton, et al.*, Civ. 07-2625 (N.D. Cal.
3 Oct. 30, 2007) (Armstrong, J.). Soon after his purchase, disputes arose over payments to the
4 homebuilder, D.R. Horton, Inc. Between 2005 and 2006, Attorney Missud filed three separate
5 actions against D.R. Horton and its affiliates in the San Francisco Superior Court alleging
6 emotional distress, fraud, and breach of contract. *Missud v. Horton, et al.*, No. 05-444247 (filed
7 Aug. 22, 2005), *Missud v. Horton, et al.*, No. 05-447499 (filed Dec. 9, 2005), *Missud et al. v.*
8 *Horton, et al.*, No. 06-457207 (filed Oct. 23, 2006). All three actions were dismissed for lack of
9 personal jurisdiction. Attorney Missud then began filing complaints in this district against the
10 same defendants alleging similar claims. The first filing was in 2007 before Judge Sandra
11 Armstrong. That action was dismissed for lack of personal jurisdiction, forum non conveniens,
12 and statute of limitations. *See Patrice Missud v. D.R. Horton, et al.*, Civ. 07-2625 at Dkt. No. 38
13 (N.D. Cal. Oct. 30, 2007) (Armstrong, J.).

14 Subsequently, Attorney Missud filed four more complaints in this district alleging,
15 among other things, that state and federal judges who previously ruled against him were
16 conspiring against him and the American public in general. In 2010, Attorney Missud filed a
17 complaint alleging that Judge Armstrong wrongfully silenced Attorney Missud by dismissing his
18 case in 2007, and that Magistrate Judge Curtis Coltrane, District Judge Roger Benitez, District
19 Judge Berry Edenfield, and District Judge Martin Reidinger were somehow conspiring with D.R.
20 Horton to silence people of low income. That complaint was dismissed by Judge Susan Illston
21 on grounds of judicial immunity. *Patrick Missud v. D.R. Horton Inc., et al.*, Civ. 10-0235 (N.D.
22 Cal. April 2, 2010) (Illston, J.). In April 2011, Attorney Missud filed a complaint alleging that
23 the San Francisco Superior Court and Superior Court Judge Charlotte Woolard were engaged in
24 a illegal conspiracy to force litigants into mediation or arbitration against their will. That
25 complaint was dismissed by Judge Phyllis Hamilton for failure to state a plausible claim and
26 judicial immunity. *Patrick Missud v. San Francisco Sup. Ct.*, Civ. 11-1856 at Dkt. No. 54 (N.D.
27 Cal. Feb. 13, 2012) (Hamilton, J.). In July 2011, Attorney Missud filed a complaint alleging that
28 several state and federal judges (renaming many of the same judges dismissed in prior actions)

1 and courts were corrupt and biased against people with low income. That complaint was
2 dismissed by Judge Edward Chen for failure to state a plausible claim and judicial immunity.
3 Judge Chen also declared Attorney Missud a vexatious litigant with respect to D.R. Horton, Inc.
4 and any of its affiliates. *Patrick Missud v. State of Nevada, et al.*, Civ. 11-3567 (N.D. Cal. Mar.
5 22, 2012) (Chen, J.). In June of this year, Attorney Missud filed this instant action against
6 several judicial defendants. As discussed, it too is frivolous and makes only reckless allegations
7 of judicial corruption.

8 Based on Attorney Missud's prior complaints, which have all failed to state plausible
9 claims against judicial defendants, this order finds that Attorney Missud's conduct against
10 judicial defendants has been both frivolous and harassing. As discussed, Attorney Missud was
11 given notice and an opportunity to oppose being declared a vexatious litigant (Dkt. No. 59).
12 After reviewing Attorney Missud's many filings in response, this order finds that none of his
13 explanations alter the frivolous and harassing nature of his conduct. Indeed, Attorney Missud's
14 responses have been nothing more than repetition of vague, conclusory, and sometimes
15 nonsensical allegations of judicial corruption implausible to support a claim.

16 Therefore, Attorney Missud is declared to be a **VEXATIOUS LITIGANT** as to all judicial
17 entities, including judges and courts. The Clerk of this Court may not file or accept any further
18 complaints filed by or on behalf of Attorney Missud (as a named plaintiff) that name judicial
19 entities as defendants. If Attorney Missud wishes to file a complaint against these entities and/or
20 individuals, he shall provide a copy of any such complaint, a letter requesting that the complaint
21 be filed, and a copy of this order to the Clerk of this Court. The Clerk shall then forward the
22 complaint, letter, and copy of this order to the undersigned for pre-filing review. If the Court
23 ascertains that the complaint or notice of appeal is duplicative or frivolous, it will not be filed
24 and will be returned to Attorney Missud. Otherwise, it will be given to the Clerk with
25 instructions to file it, subject to payment of fees.

26 Any violation of this order will expose Attorney Missud to a contempt hearing and
27 appropriate sanctions, and any action filed in violation of this order will be subject to dismissal.
28 Attorney Missud is forewarned that any future suit he files with the Court which does not

1 comply with the good faith requirements of FRCP 11 will be subject to sanctions including
2 monetary sanctions.

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4 **IT IS SO ORDERED.**

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6 Dated: September 24, 2012.


7 WILLIAM ALSUP
8 UNITED STATES DISTRICT JUDGE
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